

BEFORE THE FACT FINDER

In the Matter of the Petition of

DUBUQUE COUNTY ASSISTANT
COUNTY ATTORNEYS' ASSOCIATION

for mediation of a dispute involving
employees of

DUBUQUE COUNTY

Appearances:

Jean A. Becker, Association President, appearing on behalf of the Association.

Jan Hess, Personnel Director, appearing on behalf of the Employer.

FACT FINDING AWARD

Dubuque County Assistant County Attorneys' Association (herein "Association") and Dubuque County (herein "Employer"), having selected the Undersigned from a panel of fact finders/arbitrators provided by the Iowa Public Employment Relations Board to hear and make recommendations about the dispute specified below; and the Undersigned having held a hearing at Dubuque, Iowa, on February 4, 2002; and the parties having each made oral arguments and thereafter having submitted post-hearing exhibits, the last of which was received February 9, 2002.

ISSUES

The parties' final offers specify the issues in dispute for their July 1, 2002 to June 30, 2004 agreement (FY03-05). I summarize those that were not resolved prior to hearing as follows:¹

¹The Employer objected at the outset of the hearing to part of the Association's proposal on the basis that it had not been presented to the Employer first. Specifically, it objected that the Association is now asking for a 5% increase in each year, when the Association's last proposal to the Employer was for 4% in each year. Similarly, the last offer for longevity was only for \$1,500 for after eight years. The Employer noted that it had not had time to prepare a costing for those changed proposals. The Association asserted that its proposal were a proper alternative to offers

1. WAGES: The parties' last wage schedule is attached as Appendix A. The Employer proposes to increase the wage schedule by 3% on July 1 in each of the 3 years of the agreement. The Association proposes to:

- a. increase the wage schedule by 5% on July 1 of each year of the agreement.
- b. add four new steps to the salary schedule calculated at the same progression as the previous eight steps.
- c. that longevity bonuses be paid on July 1 of each year of the agreement as follows;

years of service amount.

10	\$1,000
15	\$1,250
20	\$1,500

2. LEAVE: The current agreement does not allow conversion of sick leave to vacation, nor does it allow employees to "loan" sick or vacation leave to other employees. The Employer proposes no change in the current terms. The Association proposes:

- a. That employees be allowed to convert sick leave to vacation leave at the ratio of one day of vacation for every two of sick leave converted.
- b. That employees be allowed to donate either sick leave or vacation leave to fellow employees in the unit for use as sick leave.

3. HOLIDAY: The Association proposes to resume the holiday schedule followed by the clerical staff in the County Attorney's office. The Employer proposes that the Good Friday holiday be substituted for the Martin Luther King, Jr. holiday, with a reservation that another holiday will be selected if Constitutional issues are raised. It appears that this issue is resolved.

DISCUSSION

This proceeding is conducted pursuant to Sec. 20.21, Iowa Code. Under that provision the fact finder is to make recommendations to resolve the parties' contract dispute. The fact finder can adopt the position of either party on any issue in dispute or can propose any

previously made to the Employer. I offered the Employer an opportunity to submit a costing after the close of the oral hearing, reserving the right of either party to request further hearing. I note that the issue as to whether these proposals are proper proposals for fact finding, is a matter which is to be addressed solely by the Iowa Public Employment Relations Board. The sole function of the fact finding is to determine whether the proposals presented are appropriate for inclusion in the parties' agreement based upon the standards of the Iowa Statutes.

compromise allowed by law. That statutory section does not provide the standards by which the fact finder is to make those recommendations; however, Section 20.22(9), Iowa Code provides standards by which an arbitrator of this same dispute would make his or her decision. I adopt those standards for the purpose of making my decision herein.

Dubuque County is the seventh largest county in Iowa, population 89,143. The county employs 450 people. It has five collective bargaining units; this unit with 10 full-time employees, the Secondary Road Department unit with 42 employees represented by the Teamsters, the 53 employee Courthouse and Library clerical unit also represented by the Teamsters, the county nursing home (Sunnycrest) unit of 169 employees represented by AFSCME, and the 64 person deputy sheriff's unit represented by the Deputy Sheriffs Association. The County Board sets the wages for most non-represented employees, but there are exceptions. The salaries of elected officials and their administrative assistants are set through the Iowa Compensation Board process, often with strong input from the County's personnel director. There are some independent boards which set the wages and salaries for the employees under their jurisdiction.

This bargaining unit is the second oldest county attorneys unit in the state, having been formed in 1985. There are nine employees in the unit and one vacant position. Six of the nine have over 18 years experience. One each has 3, 12, and 16 years experience. Four employees are at grade 3, step 8 of the schedule, two at grade 2, step 8, one at grade 2, step 3 and two at grade 1, step 8. The one vacancy will be filled at grade 1, step 1. There attorneys are assigned to specific jobs which are; 1. domestic violence (1 attorney), 2. misdemeanor (2 attorneys), 3. civil/juvenile (2 attorneys), 4. felony (3 attorneys) and child support enforcement (2 attorneys). The latter is funded through the state. None of the attorneys in the unit has supervisory or managerial duties.

SALARY ISSUES

a. Wage Rates and Schedule

The Association made a number of arguments in favor of its salary proposals. It argued that unit employees are underpaid particularly at the top of the schedule when compared to U.S. Attorneys, state public defenders and state area prosecutors. They also argued that the top rates in this unit were low when compared with attorneys in the other top 10 Iowa counties, particularly when one considers those units which are organized. The Employer argued that employees were well paid when their salaries are correctly compared with those of county attorneys in Iowa's ten largest counties. It argued that a general increase was the only economic change warranted. It believed that its offer was appropriate under current economic circumstances in any event. It also argued that the Employer is likely to have difficulty meeting any greater offer when its impact on bargaining in other units is considered.

The first question is whether the Undersigned should make wage comparisons to

attorneys employed by the U.S. government. Sec. 20.22 (9)(b), Iowa Code, permits comparison of wages of the public employees involved with those of "other public employees doing comparable work." Sec. 20.3, Iowa Code essentially defines "public employee" as employees of the State of Iowa or its subdivision. While Sec. 20.22(9), Iowa Code also permits consideration of other unnamed "relevant factors," the party proposing to use a comparison not contemplated under the statute has the burden to show that its use is relevant. I am satisfied that comparison to wage scales and benefits of the U.S. government are not appropriate because the source of funding and ability to pay of the federal government is different than that of the State of Iowa and its subdivisions. The U.S. government is also in a position to control the work of the U.S. Attorneys in a manner the State of Iowa and its subdivisions cannot.

The ordinary purpose of making comparisons to other public employees doing comparable work is to determine "prevailing patterns" of wages and other factors. The Association has offered comparisons to the wages and benefits of county attorneys of the ten largest counties in Iowa. Some of these counties do not have "full-time" county attorneys. If an attorney is not deemed "full-time" he or she may engage in private law practice in addition to his or her work for that county. This may be a major economic benefit to the attorney. In some cases, the hours of work are substantially less than normal full-time and in others nearly normal full-time. I have included two counties with part-time staffs, Pottawatomie and Story counties, because both parties have included them and both work nearly full time hours. The counties used in order of their population are Polk, Linn, Scott, Blackhawk Woodbury, Johnson, Pottawatomie, Story, and Clinton. Clinton is considerably smaller and Polk, Linn, Scott Blackhawk, Woodbury, and Johnson are considerably larger. The Association included Muscatine, but not Clinton. However, Clinton is larger than Muscatine. I have used the salary data supplied by the Employer because it is supported by the relevant portions of collective bargaining agreements, whereas the salary survey data supplied by the Association is contradicted by the actual agreement provisions from some counties. The salary survey relied upon by the Association includes positions with managerial and or supervisory responsibilities.

The better view of making comparisons is to take into account the total compensation of the employees compared (to the extent practical). This is true because some units emphasize some benefits more than wages. This concept is important here. Recently, the Employer and representatives of all of the bargaining units of the county met to deal with the rising costs of health care. Everyone concerned agreed to keep the current health insurance benefit intact. This benefit is one of the best in Iowa. Since most other benefits here are superior to those in the comparison counties, I have included the health insurance family benefit in the comparison. I have also included longevity in the comparison. Exhibit B attached hereto is that comparison. That comparison supports the view that unit employees are well paid at the senior levels of the salary schedule.

The Association also offered comparisons to the public defenders who are employees of the State of Iowa. The non-supervisory range is from Public Defender 1 to Public Defender 3, \$38,272, to \$77,002. It also compares itself to state area prosecutors. Area prosecutors perform

the same job as the county attorneys. They handle major cases for area prosecutors who do not have the expertise to handle major cases or where there are conflicts of interests. That range was for \$50,044.80 to \$74,027.20 as of July 1, 2001. These comparisons have been a difficult issue between county attorneys state-wide and their employers. Unit employees are faring well among other county attorneys in their bid to maintain their relative position. The increases proposed herein are deemed the most adequate compromise under the circumstances.

The comparison factor does not support a change to the salary schedule with respect to either longevity or additional steps. I note that the Association also based its longevity request on a comparison to the deputy sheriffs' unit. However, that plan is unique in the county. It was the result of fact finding and the purpose of the award was to attempt to catch the deputies up to their counterparts among Iowa's ten largest counties. They were ninth from the top at the time.

b. General Wage Increase

The past agreements between the parties show that the parties have voluntarily settled on wage increases in the range of 3% to 5%. The current CPI-U December, 2000, to December, 2001, is up 1.6%. The CPI based upon its history supports the offer of the Employer.

The internal settlement pattern is an "other relevant factor" regularly used by parties in settling collective bargaining agreements. All of the units in the county are in the third year of their collective bargaining agreements, except Sunnycrest (AFSCME). All of those agreements except the Dubuque County sheriffs' unit have settled for 3% for FY 03. The sheriff unit received a 5% increase, which I conclude was a catch-up increase. It was ranked lower in comparison to the ten largest counties' sheriffs' units than the county attorneys are. Sunnycrest recently concluded a three year agreement starting in FY 03. They settled for 3% FY 03 and 2.5% and 2% in each succeeding year.

Last year the county gave elected officials a range of increases, many large, based upon the compensation board recommendations. These were for the purpose of adjusting rates to bring the compensation of the affected people to 7th among the 10 largest counties. Those employees have not historically received all of the raises this unit has received and I find no comparability with those increases.

The only county attorneys' settlement reported was for Woodbury County for FY 03. They settled for 4.2%. Other settlements in units of different types of employees range from 2% to the maximum of the previously mentioned 4.2%. All others are below 4%, except one is 2% every six months.

c. Ability to Pay

The Employer does not take the position that it cannot meet the proposal found reasonable herein. It does take the position that it will have difficulty meeting any offer above

that which it proposes, especially when the precedential value of any such settlement is considered across county units.

A number of factors are creating uncertainty for the Employer's finances and impinging on its ability to finance wage and benefits settlements for the current and next fiscal years. The Employer, in conjunction with the City of Dubuque, is in the process of building an addition to the jail. The building costs do not affect the general fund; however, it has added new employees to staff the jail. These and other costs increased the budget. Ordinarily, when an employer adds staff and then claims inability to pay, fact finders give that argument little weight. However, the new staff is required to meet the minimum standards for jails. It is, therefore, a factor. I do note that the Employer will have considerable savings in not using jail space in other counties. During FY 02, the state has unexpectedly cut several important revenue sources and may yet cut others. This has already resulted in a \$500,000 shortfall.

In FY 03 other general fund expenditures will be 45 million, but the Employer will have only 38 million in revenue. The excess was projected to come from the ending balance which will be reduced from \$16 million to about \$9.6 million. Of this only \$2.7 is in the general fund. This is a level which the Employer correctly considers minimally necessary to fund operations into FY 04. The Employer currently taxes at the maximum \$3.50 per thousand rate. It has transferred all of the general fund expenditures it can to other funds, namely FICA and IPERS. Its new revenue will be \$400,000, most of which is already accounted for by the increase in health insurance. Reassessment is underway and will result in raised property values, but it is not going to be completed soon.

This tight financial situation is likely to deteriorate because state funding to counties will be reduced. The Employer indicated at hearing that this was the result of a shortfall in anticipated revenue by the state due to the recession. It is unclear at this time by how much and in what programs the state will cut this funding. One area that the state is possibly going to cut funding is for public health nursing. Another area under consideration is child support recovery services. This might result in the reduction of funding of the child support attorneys in the unit. The state has proposed a cut of 13.5% in Title 19 revenue for Sunnycrest, about \$756,000.

In short, the Employer has demonstrated a need for fiscal restraint over at least the first two years of this agreement. I note that some other counties which have already granted raises to their employees are in the difficult position of having to request that employees forego those raises. While Dubuque is not likely to be in that same situation, fiscal restraint is warranted in the first two years of this agreement.. The record does not warrant the same conclusion for the third year of this agreement. If revenues do not increase, Dubuque will be forced to make program adjustments rather than limit staff salaries. If the recession ends as it appears it will, employees might be entitled to extra consideration for the restraint exercised in the first two years.

The costing difference between the parties' different wage increase positions follows.

This is based on a modified roll forward basis. The cost of the employee who has left has been included to the point he left and the cost of his replacement has been assumed for the rest of the year. That forms the base year cost. The following is the cost of the proposed increases:

roll forward	FY03	FY04	FY05
Association			
0.05	\$29,703.37	\$39,615.67	\$48,990.76
step increases	\$3,000.00	\$3,000.00	\$3,000.00
health increase	\$13,923.75	\$11,784.86	\$13,199.04
total	\$46,627.12	\$54,400.53	\$65,189.80
Employer			
0.03	\$22,185.88	\$22,851.46	\$23,537.00
step increases	\$3,000.00	\$3,000.00	\$3,000.00
health increase	\$13,923.75	\$11,784.86	\$13,199.04
note: FICA and			
total	\$39,109.63	\$37,636.32	\$39,736.04

As noted, one person, Mr. Walz, left the unit mid-year last year. That produced an unexpected one-time cost saving of \$24,849. If this position were not filled, the Employer would save \$58,784 in salary alone per year. Health Insurance would be \$10,097. The Employer expects to replace Mr. Walz with an employee at level 1, step 1. The lower salary will produce a savings of \$9,495 per year in salary alone over the Employer's modified roll forward costing. (I note that by counting unexpected savings which have occurred in the year before, it is inappropriate to double count by counting the expected retirement of another employee next year.)

For the reasons, expressed above, I conclude that a 3% increase on July 1, 2002, and again on July 1, 2003 is appropriate. I note that the available evidence of the increase in Woodbury suggests that a 4% increase on July 1, 2004, may be necessary to keep pace with other county attorneys' wages. The latter is also consistent with my conclusions about the Employer's ability to pay.

LEAVES ISSUES

The Association's proposals relating to "lending" sick leave or vacation leave to another employee are without merit. The party proposing to change a contract provision must show that a change is needed and that its proposal is reasonably necessary to meet that need.

There has been no specific circumstance when anyone in the unit has run out of sick leave. It does not appear likely that there will be one. Almost everyone in the unit has the maximum 928 hours sick leave accumulation, except one who has 160 hours and another 840 hours. It appears that the proposal is based upon a similar provision in a State of Iowa collective bargaining unit contract, but that provision was not in evidence. None of the ten largest counties' have a similar provision. The rate of accumulation of sick leave and maximum here is greater than the state and most of the ten largest counties.

Article 11 provides bank of sick leave after 928 to pay for health insurance. The total of benefits comes to almost 12 weeks short of a year of paid sick leave and health insurance. The remaining 12 weeks(family and medical leave) is unpaid, but receives paid health insurance under this provision. Accordingly, no change in the current contract is proposed with respect to this issue.

The conclusion is also the same with respect to the Association's proposal as to converting sick leave to vacation. It appears that since most unit employees are at the maximum accumulation, they feel they are losing something when they exceed the maximum. It appears State of Iowa collective bargaining agreements have a provision allowing the conversion of 4 days sick leave to 1 day of vacation. The specific terms were not in evidence.

Article 11 provides for sick leave accrued at the rate of 13 days per year to a maximum of 928 hours (116 days). The agreement provides for 3 personal days. It, therefore covers most of the circumstances in which an employee might need time off for non-recreational purposes. There has been no evidence indicating that these provisions have not met the needs of employees or that there is a problem in this unit with excessive sick leave use. There is no evidence of any similar provision having been adopted in any other Dubuque County unit or among any of the comparable counties. Accordingly, I recommend that the language of the agreement remain the same as to this issue.


RECOMMENDATIONS

That the parties' July 1, 2002 to June 30, 2005, agreement contain

1. the parties' previous tentative agreements
2. 3% across-the-board increase effective July 1, 2002, and again on July 1, 2003. A 4% across-the-board increase effective July 1, 2004.

3. no other change in current language

Dated at Milwaukee, Wisconsin, this 18th day of February, 2002


Stanley H. Michelstetter II,
Fact Finder

FACT FINDER'S APPENDIX A
APPENDIX "C"
ASSISTANT COUNTY ATTORNEYS' ASSOCIATION
WAGE SCHEDULE
JULY 1, 2001 THROUGH JUNE 30, 2002

STEP	GRADE 1	GRADE 2	GRADE 3
1 part-time	31,714.80	33,477.60	35,240.40
full-time	42,286.40	44,636.80	46,987.20
hourly	20.33	21.46	22.59
2 part-time	34,366.80	36,129.60	37,876.80
full-time	45,822.40	48,172.80	50,502.40
hourly	22.03	23.16	24.28
3 part-time	37,034.40	38,781.60	40,528.80
full-time	49,379.20	51,708.80	54,038.40
hourly	23.74	24.86	25.98
4 part-time	39,608.40	41,418.00	43,196.40
full-time	52,811.20	55,224.00	57,595.20
hourly	25.39	26.55	27.69
5 part-time	42,291.60	44,054.40	45,832.80
full-time	56,388.80	58,739.20	61,110.40
hourly	27.11	28.24	29.38
6 part-time	44,943.60	46,706.40	48,469.20
full-time	59,924.80	62,275.20	64,625.60
hourly	28.81	29.94	31.07
7 part-time	46,753.20	48,469.20	50,232.00
full-time	62,275.20	64,625.60	66,976.00
hourly	29.94	31.07	32.20
8 part-time	48,469.20	50,232.00	52,010.40
full-time	64,625.60	66,976.00	69,347.20
hourly	31.07	32.20	33.34

Salary Schedule Maxi Exhibit B		Maximums as of June 30, 2002				
County	Misdemeanor	Juvenile/Civil	Felony	Family Health Ins.	Years To Max.	Longevity
Polk	\$88,787.00	\$88,787.00	\$88,787.00	\$6,991.68	10 years	2.5% disc. included
Linn	\$56,974.00	\$72,723.00	\$79,162.00	\$5,122.08	range based on perf.	merit included
Scott	\$45,609.00	\$58,820.00	\$58,820.00	\$9,171.31		
Blackhawk w/o long.	\$41,732.38	\$55,394.86	\$66,767.51	\$6,350.04		12 \$55/mo. after 8 yr.
Woodbury	\$62,645.00	\$62,645.00	\$62,645.00	\$5,225.04		12 \$2,100 after 12, incl.
Johnson	\$41,940.00	\$55,852.00	\$67,455.00	\$7,910.40		15
Pottawattamie	\$41,263.88	\$58,820.00	\$58,820.00	\$6,602.12	no information	
Story	\$42,000.99	\$59,000.00	\$59,000.00	\$6,171.60	no shcedule	
Clinton	\$44,500.00	\$49,500.00	\$49,000.00	\$7,200.00	no information	
Average	\$51,716.92	\$62,393.54	\$65,606.28			
Dubuque	\$64,625.60	\$66,976.00	\$69,347.20	\$10,097.78		8
rank	2	3	3			

CERTIFICATE OF SERVICE

I certify that on the 18th day of February, 20 02, I served the foregoing Report of Fact Finder upon each of the parties to this matter by (_____ personally delivering) (☒ mailing) a copy to them at their respective addresses as shown below:

2002 FEB 20 PM 12:58
IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD

I further certify that on the 19th day of February, 2002, I will submit this Report for filing by (_____ personally delivering) (☒ mailing) it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, IA 50309.

Stanley H. Michellette
Stanley H. Michellette Fact-Finder